

REMARKS

The present Amendment is in response to the Official Action mailed October 2, 2009 ("the Action"). Claims 1, 4, 9, and 13 have been amended herein. Claims 15, 17, and 23 have been canceled herein. Claims 5, 11, and 12 have been previously canceled. No new claims have been added herein. Therefore, claims 1-4, 6-10, 13, 14, 16, and 18-22 remain pending in the present case. The following sets forth Applicants' remarks pertaining to those currently pending claims and the Action.

In the Action, the Examiner first objected to claim 13 as improperly depending from previously canceled claim 11. The Examiner indicated that for examination purposes claim 13 was considered as depending from claim 9. By way of the present Amendment, Applicants have indeed amended dependent claim 13 to properly depend from independent claim 9. Applicants respectfully request that the Examiner remove the objections to such claim accordingly.

Further in the Action, the Examiner set forth the following rejections in view of prior art:

- Claims 9, 10, and 13-14 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,425,920 to Hamada ("Hamada") in view of U.S. Patent No. 5,306,308 to Gross ("Gross") and U.S. Patent No. 5,501,269 to Buettner-Janz et al. ("Buettner-Janz").
- Claims 1-4 and 6-8 under 35 U.S.C. § 103(a) as being unpatentable over Hamada in view of Gross, further in view of Buettner-Janz, and additionally in view of U.S. Patent No. 6,277,149 to Boyle et al. ("Boyle").

Essentially, the Examiner asserted Hamada to disclose all the claim limitations save for a beveled edge extending

around the spacer body circumference, relative angle designation marks, and a tapered axially medial groove. The Examiner cited Gross as teaching the latter two of those limitations, and Buettner-Janz as teaching the beveled edge limitation. Moreover, the Examiner noted that one of ordinary skill in the art at the time of the present invention would have modified Hamada in view of both Gross and Buettner-Janz. With regard to independent claims 1 and 4, the Examiner asserted that Hamada, Gross, and Buettner-Janz disclose similar limitations, but do not teach a body having a porous surface. However, the Examiner cited Boyle as teaching such a limitation, and again noted that it would have been obvious to one of ordinary skill in the art to modify Hamada in view of the three references.

While Applicants do not agree with the Examiner's three and four reference combinations in rejecting the claims noted above, they do acknowledge and respectfully thank the Examiner for indicating that previous claims 15-23 were only objected to as being dependent upon a rejected base claim, but allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Also by way of the present Amendment, independent claim 1 has been amended to include the limitations of previous dependent claim 15, independent claim 4 has been amended to include the limitations of previous dependent claim 17, and independent claim 9 has been amended to include the limitations of previous dependent claim 23. As such, those independent claims, as amended, are allowable. Moreover, the remaining claims also constitute allowable subject matter by virtue of their proper dependence from one of independent claims 1, 4, or 9.

While each of the independent claims have been amended to include the subject matter noted as allowable by the Examiner in the Action, Applicants do not make any admission as to the viability of the Examiner's rejections, and reserve the right to

seek broader claims in one or more continuing applications relating to the present case. This includes claims similar to those of the previously presented claims, or new claims that are of a different scope. In light of all of the above, Applicants respectfully request allowance of the present case.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: December 21, 2009

Respectfully submitted,
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